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Without the leave of this or any other court.

Richard-Enrique; Ulloa, Sui Juris, unrepresented

Nation "New York".

general post-office.

Hurley-town.

United States Minor, Outlying Islands. Near. [12443-9998]

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

APR 15 2011

LAWRENCE K. BAERMAN, CLERK
ALBANY

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,[sic])	CASE # 1:10-CR-0321 (TJM),
)	
Plaintiff,)	OBJECTION TO
)	ORDER DATED
v.)	03/04/2011
)	
RICHARD ENRIQUE ULLOA,[sic])	MOTION TO
)	RECONSIDER
)	REQUEST FOR
Defendant.)	ALL GRAND JURY
)	TESTIMONY
)	

Objection to order and Motion to Reconsider

state of New York }
 } §
county of Ulster }

NOTICE OF MOTION

Date, Time and Place: May 09, 2011 10:00am, Albany New York

Nature of Action: Objection and Motion to Reconsider

Relief Demanded: All Grand Jury transcripts & in-court presentations

Motion By: richard-enrique: Sui Juris / UCC 1-308

Supporting Papers: Attached Motion

1. COMES NOW, Petitioner, Richard-Enrique: Ulloa, unrepresented, and as always by special invitation, as Beneficiary, and as a living man and the Executor of the Trust RICHARD ENRIQUE ULLOA, object and move this court;
2. Since both Grand Juries were held in secrecy and I was not allowed to attend or participate, as required by the due process clause of my protected constitutional rights, which by not following the Rules of the Federal Criminal Code is considered fraud, I am requesting a transcript of the entire proceeding, which includes everything that was said in the Grand Jury, excluding the deliberation if not allowed, and the in-court, open court presentation of the indictment by the foreman.
3. The reason the prosecutor stated the first Grand Jury was held in secrecy was he “was afraid I would flee”, [mind reader] this would not have occurred, did not occur and will not occur; he has pretended to be a mind reader throughout this entire proceedings, and by not following the Rules of the Federal Criminal Code is considered fraud.
4. The reason for the second secret hearing and the reason provided to the court as to why I was not allowed to defend myself was that “I would flee”, [*again mind reading*] but in this grand jury the DOJ amended the complaint with more charges, and this was not a cosmetic change. Rule 6(f) requires that the grand jury foreman to record the vote and then file a letter or certificate of concurrence with the clerk of the court, it was not completed, and the grand jury transcripts will provide a light into those proceedings, since I was not allowed to

participate in the grand jury process, and by not following the Rules of the Federal Criminal Code is considered fraud.

(f) Indictment and Return. A grand jury may indict only if at least 12 jurors concur. The grand jury—or its foreperson or deputy foreperson—must return the indictment to a magistrate judge in open court. If a complaint or information is pending against the defendant and 12 jurors do not concur in the indictment, the foreperson must promptly and in writing report the lack of concurrence to the magistrate judge.

28 U.S.C. 2072(b) Rules of Procedure and Evidence, section (b) clearly states that, “Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.”

5. The original indictment and the amended indictment are signed by two different foremen, which the evidence indicates two different Grand Juries, and without the entire transcripts, this cannot be determined.
6. I have the right, protected by the state and federal constitutions to appear and defend in person and by counsel at EVERY STAGE of the criminal proceedings against me, which necessarily includes the array, impaneling, swearing and charging of the purported grand jury which returned the aforesaid purported indictment.
7. The deprivation of my constitutionally protected right to appear and defend in person and by counsel and be present and make any challenge I may have to the array or the polls of the aforesaid grand jury which indicted me was a fundamental error of constitutional proportions, rendering said grand jury incompetent to sit on my alleged case, and is

considered a fraud upon the court by not following the Rules of the Federal Criminal Code, rules 2-9.

8. The deprivation of my right to be present and appear and defend in person and by counsel at the impaneling, swearing and charging of the aforesaid grand jury, vitiated the indictment not on account of its form, but for the more important controlling reason that it rendered said grand jury incompetent to sit on my alleged case.
9. As a matter of prevailing constitutional law, my liberty cannot be taken away from me except on an indictment preferred by a **duly constituted and organized grand jury**, and one **competent** to inquire into my alleged offense.
10. Notwithstanding general practice and custom in most state and federal criminal cases, as a matter of prevailing constitutional law, the right to be present in all criminal prosecutions includes the right to be present when the grand jury is impaneled, and cannot be confined *"...to the hour and place of actual peril, when liberty and life shall be in greatest jeopardy, when the accused shall stand before [a petit jury] a tribunal having power over either or both; but the words [in criminal prosecutions] are broad enough to cover the initiate prosecution, whenever and wherever it takes the matured form of a legal accusation of crime"* (State v. McO'Blenis, 24 Mo. 405, quoted from State v. Warner, 65 S.W. 584 @588).
11. *"Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."* Miranda v. Arizona, 384 U.S. 436.

12. I did not appeared before the grand jury before or after it was impaneled, sworn in and charged to investigate me by your rules, while the prejudicial presence of Richard S. Hartunian, and/or other prosecuting attorneys in the Grand Jury chambers adversely and improperly influenced the Grand Jurors against me, and prevented my own personal testimony, whereas I had a preceding, absolute right protected by the state and federal constitutions to be present and challenge the array, impaneling or polling of said grand jury as aforesaid, and the record shows I have been denied that right, and hereby and herein make my challenge against said purported grand jury which has allegedly indicted me in the above-styled alleged case.
13. The courts have ruled that a potential defendant may properly be subpoenaed to appear before a grand jury that is investigating his activities: ***"It is in keeping with the grand jury's historic function as a shield against arbitrary accusations to call before it persons suspected of criminal activity so that the investigation can be complete."*** United States v. Mandujano, 425 U.S. 564, 573 (1976).
14. However, now that the purported grand jury in this alleged case has returned an indictment against me, it would be an abuse of process for said grand jury to now call me to testify, or use its subpoena powers on me, so said grand jury cannot possibly correct its error and the only way to correct the error is for this court to quash the indictment for the reasons stated herein.

15. A hearing was held on Jun 4, 2010 with Agent Mark Maroney as the only witness, on June 18, 2010 Mary Beth Huyak and Mark Maroney were they only witness's. But on October 27, 2010 when the amended indictment was issued the only witness was Agent Mark Maroney. As this court is fully aware, an amended indictment other than cosmetic changes must be represented to the grand jury in its entirety.
16. Generally speaking, as a matter of law, an indictment may not be amended (See *Ex parte Bain*, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849 and Rule 7 of Federal Rules of Criminal Procedure (2007).
17. The grand jury was intentionally designed as a safeguard to protect defendants against oppressive government practices, such as what has happened to me. *Butterworth v. Smith*, 110 S.Ct. 1376, 1380 (1990); *U.S. ex rel Toth v. Quarles*, 76 S.Ct. 1 (1955). Under the common law it was understood that the grand jury was to stand between the prosecutor and the accused. *Hale v. Henkel*, 26 S.Ct. 370, 373 (1905). It appears to some that the grand jury is obsolete. *Delays in Criminal Cases, Campbell, supra*.
18. The provisions of federal **Rule 6** are addressed as follows: **Rule 6(a)**. Were there in fact 16 to 23 members of the grand jury present at the session that purportedly indicted me? If so, was a record kept of the names of those individuals? **Rule 6(b)1**. How could I challenge the array of the grand jurors who purportedly indicted me if their names were not recorded?

Rule 6(b)2. How can one challenge the legal qualifications of a single grand juror if the names of those who purportedly voted to indict me were not recorded? See e.g., U.S. v. Thompson, 144 F.2d 604, 606 (2nd Cir. 1944)(Hon. Learned Hand naming disqualified jurors). **Rule 6(c).** Is there a similar **Rule 6(c)** voting record of the Grand Jurors filed with the clerk of the court in this alleged case against me? In the federal courts this is simply a standard form supplied by the Administrative Officer (form DC53) identifying the court, the date, the location, the number of grand jurors concurring to indict me, and the signature of the grand jury foreperson. U.S. v. Deffenbaugh Industries, Inc., 957 F.2d 749, 757 (10th Cir. 1992). I.e., if only the number of grand jurors allegedly voting to indict me is recorded and not their names, **Rule 6(b)(2)** is rendered mere superfluous. Courts may not construe a statute so as to make any part of it mere superfluous. U.S. v. Monroe, 943 F.2d 1007, 1015 n. 8 (9th Cir. 1991). Once **Rule 6(b)(2)** and its intent have been ignored there is no way to verify whether 12 or more legally qualified jurors voted to indict me or the grand jury foreman simply scribbled a number he thought appropriate over his signature. No investigation can ever be made as to how a grand juror voted. United States v. Kirkpatrick, *supra*. The failure to record the names of the 12 or more grand jurors who purportedly voted to indict me renders the indictment void.

19. By the evidence presented the indictment is defective and the entire Grand Jury transcripts, and in open court transcripts of all witnesses and indictments presentation to the court by the foreman for all dates is needed in order to present to the court the proper argument of the defective indictment, and is considered a fraud upon the court by not following the Rules of the Federal Criminal Code, rules 2-9.

20. The following testimony is NOT required, since it was made available;

- a. *Friday June 4, 2010, Mark Maroney*
- b. *Friday June 18, 2010, Beth Huyck*
- c. *Friday June 18, 2010, Mark Maroney*
- d. *Wednesday, October 27, 2010, Mark Maroney*

21. I hereby request that the concurrence forms signed by the minimum of nine of the minimum of twelve grand jurors who purportedly found the indictment against me be disclosed pursuant to New York State law. By federal law, a minimum of twelve jurors must vote for indictment, and I am entitled to have said concurrence forms provided to me pursuant to *FRCr.P 6(e)(3)(C)(i)*. *FRCr.P 6(f)* requires an “*indictment may be found only upon the concurrence of 12 or more jurors.*” Failure to return an indictment against me by such procedure renders the indictment void. *Gaither v. United States*, 413 F.2d 1061 (D.C.Cir. 1969); *United States of America v. Michael G. Kuball*, U.S. District Court for the District of Alaska, Case No. A-91-059CR.

22. If this in fact was the way the purported indictment against me was returned in open court there is an easy way to tell: there will be a record kept of the proceeding pursuant to your New York Code of Criminal Procedure, and 28 U.S.C. §753, *the Court Reporter’s Act*. It is my contention; based on my being denied proof by way of concurrence forms showing the names of the grand jurors who voted to indict me, that none of the Sections of the New York Statutes or *Rule 6* designed to protect me were adhered to. I ask, where are the records?

23. So, in the pursuit of justice I again request all the Grand Jury transcripts, in court presentations, any other in court proceedings, excluding any deliberation, but all presentations and testimonies, including all in-court presentation of both indictments.

24. ALL RIGHTS RESERVED TO AMEND WITHOUT LEAVE OF COURT WITH MY CHOICE OF LAW AND MY CHOICE OF COURT

I pray to our Heavenly Father and not this court that justice be done.

Reserving ALL Natural God-Given Unalienable Birthrights, Waiving None, Ever,

28 USC §1746

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true, complete and correct. 28 USC §1746

Signed on this the eleventh day of the fourth month in the year of our Lord and Savior two thousand eleven.

Richard-Enrique

Address:

Richard-Enrique, unrepresented
Phone 845-687-7855
Nation "New York".
general post-office.
Hurley-town.
United States Minor, Outlying Islands. Near. [12443-9998]

JURAT

Ulster)
New York) ss.
)

The above named Litigee, **:richard-enrique:** appeared by special limited appearance, in person, before me, a Notary, and personally known to me, subscribed, the truth of this above document REQUEST FOR delay.

Under oath this 11 day of April, 2011.

OBJECTION TO ORDER TO OBTAIN GRAND JURY Page 9

Donald Cline

NOTARY PUBLIC, STATE OF NEW YORK
NO. 01CL6015194
QUALIFIED IN ULSTER COUNTY
COMMISSION EXPIRES 10/26/2014

:richard-enrique:
Living Litigee
peek farms 3rd judicial district
Near [12484-9998]
845 687 7855

Proof and Evidence of Service

I, Richard-Enrique; Ulloa: declare that I served by filing one copy of the "OBJECTION TO ORDER ON GRAND JURY TRANSCRIPTS" by "hand-delivered by private carrier-service on "USDC of Northern NY" sent by post-office-first class-mail AND OR CERTIFIED MAIL to the following:

THOMAS A. CAPEZZA	USDC OF NORTHERN NY
Assistant U.S. Attorney Bar #503159	COURT CLERK
445 Broadway, Room 509	445 Broadway, Room 509
ALBANY, NEW YORK [12207]	ALBANY, NEW YORK [12207]
First class mail	First class mail

Richard-Enrique

:richard-enrique:

April 11, 2011

**NOTICE TO THE AGENT IS NOTICE TO THE PRINCIPAL NOTICE TO THE
PRINCIPAL IS NOTICE TO THE AGENT**

"RICHARD ENRIQUE ULLOA", Estate
Office of Executor,
Nation "New York",
General-Post Office,
Hurley-town,
United States Minor, Outlying Islands. Near. [12443-9998]

12443-9998

U.S. DISTRICT COURT
ALBANY, N.Y.
12207

LAURENCE A. B. CLERK
ALBANY

1220732548 0012



US District Court of Northern NY
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